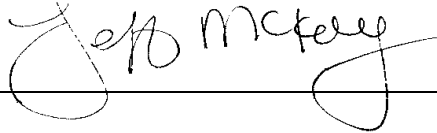
 <p><b>Corrections and Community Supervision</b></p> <p><b>DIRECTIVE</b></p>	<p>TITLE</p> <p><b>Incarcerated Individual Requests for Copies of Pre- Sentence Reports</b></p>		<p>NO. 8370</p>
			<p>DATE 12/07/2021</p>
<p>SUPERSEDES</p> <p>DIR #8370 Dtd. 02/18/21</p>	<p>DISTRIBUTION</p> <p>A B</p>	<p>PAGES</p> <p>PAGE 1 OF 6</p>	<p>DATE LAST REVISED</p>
<p>REFERENCES (Include but are not limited to)</p> <p>Criminal Procedure Law §390.5(2)(a); Chapter 56 Laws of 2010; Criminal Procedure Law §390.30; 9 NYCRR Part 8006; Directive #8360</p>		<p>APPROVING AUTHORITY</p> 	

- I. **DESCRIPTION:** To establish a uniform process for the procurement of a Pre-Sentence Report as an incarcerated individual prepares for a discretionary release appearance before the Board of Parole or when an incarcerated individual has filed, or intends to file, an administrative appeal following a denial of parole release.
- II. **POLICY:** The 2010 amendment to Criminal Procedure Law (CPL) §390.50(2)(a) allows an incarcerated individual to apply to the sentencing Court for a copy of the Pre-Sentence Report(s) for use in preparation for an appearance before the Board of Parole, or in association with the filing of an administrative appeal or intention to file an administrative appeal pursuant to 9 NYCRR Part 8006. The 2010 amendment reads as follows:

“Upon written request, the court shall make a copy of the presentence report, other than a part or parts of the report redacted by the court pursuant to this paragraph, available to the defendant for use before the parole board for release consideration or an appeal of a parole board determination. In their written request to the court the defendant shall affirm that they anticipate an appearance before the Parole Board or intends to file an administrative appeal of a parole determination. The court shall respond to the defendant’s written request within twenty days from receipt of the defendant’s written request.”

In an effort to implement this provision of the law, the Department of Corrections and Community Supervision (DOCCS), the Office of Probation and Correctional Alternatives (OPCA), and the Office of Court Administration (OCA), have collaborated in the development of a uniform process for incarcerated individuals to follow. A two-part DOCCS form, Form #CS8370 (Part 1, “Request for County Pre-Sentence Report,” and Part 2, “Order Granting the Disclosure of a Pre-Sentence Report,”), has been developed to be used exclusively for the purpose of requesting a copy of the Pre-Sentence Report from the Court. It is the policy of the Department to provide assistance to incarcerated individuals under DOCCS, New York State Office of Children and Family Services (OCFS), and New York State Office of Mental Health (OMH) custody with this procedure.

The request form will be completed by an Offender Rehabilitation Coordinator (ORC) or a Supervising Offender Rehabilitation Coordinator (SORC) at the assigned facility of confinement, signed by the incarcerated individual in the presence of an ORC or SORC, and facility staff will be responsible for mailing the form directly to the sentencing Court. A copy of the request form will be maintained in the Community Supervision case folder in file Section II-B. Where so ordered by the sentencing Court, facility staff will be responsible for providing the incarcerated individual with a copy of the Pre-Sentence Report.

The rules governing an incarcerated individual's request for access to documents under the NYS Freedom of Information Law (FOIL) do not apply to this provision and therefore incarcerated individuals are not required to pay a fee for a copy of either the Pre-Sentence Report or a copy of the Order granting the disclosure of the pre-sentence report.

### III. DEFINITIONS

- A. Amendment to Criminal Procedure Law §390.50(2)(a) Summary: Upon written request, the Court shall make a copy of the Pre-Sentence Report available to an incarcerated individual for use before an appearance before the Parole Board for release consideration or when an incarcerated individual has filed, or intends to file, an administrative appeal of the Parole Board determination. In the written request, the incarcerated individual must affirm an anticipated appearance before the Parole Board, or intent to file an administrative appeal of a Parole Board decision. The Court must respond within 20 days from receipt of the written request.
- B. Form #CS8370, Part 1, "Request for County Pre-Sentence Report," and Part 2, "Order Granting the Disclosure of a Pre-Sentence Report": The DOCCS approved form that is to be submitted by staff directly to the appropriate Court of jurisdiction. This document contains the name of the Sentencing Judge, address of the Court, county of conviction, incarcerated individual's name, Department Identification Number (DIN), New York State Identification (NYSID) number, facility name, ORC name, reason for request, indictment number(s), crime(s) of conviction, date of sentence, signature of the incarcerated individual, and date of signature. This form also includes the Order and specific instructions of the Court, date of Order, and signature of the Judge. The Order of the Court is to be returned by mail to the attention of the Director of Guidance and Counseling, New York State Department of Corrections and Community Supervision, Harriman State Campus, 1220 Washington Avenue, Albany, NY 12226-2050; or by email at: DOCCS.sm.GuidanceCO.@doccs.ny.gov.
- C. Pre-Sentence Investigation and Report (CPL §390.30): The pre-sentence investigation consists of the gathering of information with respect to the circumstances attending the commission of the offense, the defendant's history of delinquency or criminality, and the defendant's social history, employment history, family situation, economic status, education, and personal habits. Such investigation may also include any other matter which the agency conducting the investigation deems relevant to the question of sentence and must include any matter the Court directs to be included. Whenever information is available with respect to the defendant's physical and mental condition, the pre-sentence investigation must include the gathering of such information. The Pre-Sentence Report shall also contain a victim impact statement, unless it appears that such information would be of no relevance to the recommendation or Court disposition. The report shall include an analysis of the victim's version of the offense, the extent of injury, or economic loss and the actual out-of-pocket loss to the victim, and the views of the victim relating to disposition, including the amount of restitution and reparation sought by the victim after the victim has been informed of the right to seek restitution and reparation, subject to the availability of such information. In the case of a homicide or where the victim is unable to assist in the preparation of the victim impact statement, the information may be acquired from the victim's family. The victim impact statement shall be made available to the victim by the prosecutor pursuant to Subdivision 2 of Section §390.50 of the CPL.

Nothing contained in Section §390.30 of the CPL shall be interpreted as a requirement that a victim supply information during the course of the pre-sentence investigation or preparation of the Pre-Sentence Report.

#### IV. PROCEDURE

##### A. Incarcerated Individual Request for Assistance, Eligibility, Determination, and Request for County Pre-Sentence Report

1. Incarcerated Individual Request for Assistance and Eligibility Determination
  - a. Upon receipt of an incarcerated individual's written request for assistance, the ORC will review the case record and make a determination regarding eligibility under CPL §390.50(2)(a). To be eligible, the incarcerated individual must meet one of the following criteria:
    - (1) The incarcerated individual must have a Parole Board release interview scheduled to occur within the next six months.
    - (2) The incarcerated individual has filed, or intends to file, an administrative appeal of the most recent denial of parole.
  - b. If an incarcerated individual does not meet either of the above referenced criteria, the ORC will notify the incarcerated individual in writing and enter the case action in the Case Management System (CMS) record of the incarcerated individual.
2. Request for County Pre-Sentence Report
  - a. If an incarcerated individual meets either of the criteria referenced above, the ORC will meet with the incarcerated individual and complete Form #CS8370. The form must include the following information:
    - (1) The name and address of the Sentencing Judge.
    - (2) Date of the request.
    - (3) Incarcerated individual name and DIN.
    - (4) ORC's name submitting the form.
    - (5) Eligibility criteria verification.
    - (6) County of conviction (or adjudication).
    - (7) Indictment number(s) or SCI number(s).
    - (8) Crime(s) of conviction.
    - (9) Name of the Judge.
    - (10) NYSID number.
    - (11) Date of the sentence.
    - (12) Incarcerated individual signature and date of signature.

NOTE: If an incarcerated individual is serving an indeterminate sentence and a determinate sentence where a parole eligibility date has been established, staff must send the request for the county Pre-Sentence Report to the Court that imposed the indeterminate sentence **and** to the Court that imposed the determinate sentence.

Under CPL §390.50(2)(a), the Department will only provide assistance to incarcerated individuals eligible for either Parole Board discretionary release consideration or in connection with an administrative appeal following a denial of discretionary release by a panel of the Parole Board. ORCs are not required to provide assistance, under this provision, to incarcerated individuals serving only determinate sentences where there is no opportunity for Parole Board discretionary release consideration.

- b. The ORC will interview the eligible incarcerated individual and complete Form #CS8370. **Under no circumstances** is an incarcerated individual to be provided with a blank copy of this form. The request forms will be maintained by facility staff and they will only be made available to eligible incarcerated individuals to sign during the interview process.
- c. Following the interview with the incarcerated individual, staff will mail the original request forms to the attention of the Sentencing Judge. The Court is required to respond to the written request within 20 days from receipt of the request, and therefore it is extremely important that facility staff submit the request forms to the appropriate Court in a timely manner. In addition to the mailing address for the Court, facility staff must ensure that the front of the mailing envelope includes the reference, "Pre-Sentence Report Application." The request forms must include the return mail address of New York State Department of Corrections and Community Supervision, Director of Guidance and Counseling, Program Services, Harriman State Campus, 1220 Washington Avenue, Albany, NY 12226-2050. This address should also be noted on the envelope as the return mailing address.

NOTE: If it is determined that the Sentencing Judge has retired, is deceased, or no longer serves as judge for the particular jurisdiction, facility staff will direct the request forms to the attention of the Administrative Judge of the Court where the incarcerated individual was originally sentenced.

- d. Facility staff will place a copy of the request form in the incarcerated individual's Community Supervision file in file Section II-B.
- e. Facility staff will confirm submission of the request forms to the Court via case entry in the CMS record of the incarcerated individual. Staff must ensure that the case record entry identifies the date that the request form was sent, the indictment number, and the Court as indicated in Section IV-C.

**B. Order Granting the Disclosure of the Pre-Sentence Report**

1. Return of Form #CS8370, "Order Granting the Disclosure of the Pre-Sentence Report," to Central Office (CO) Guidance and Counseling.
  - a. Part 2 of Form #CS8370 will be completed and returned by the Court to the attention of the Director of CO Guidance and Counseling.
  - b. Upon receipt of the Order, CO Guidance Counseling staff will make the appropriate case entry in the incarcerated individual's CMS record.
  - c. The Sentencing Court (Judge) will direct that DOCCS do one of the following:
    - (1) Order DOCCS to provide the incarcerated individual with a copy of the pre-sentence report from the Community Supervision file.

However, if CO Guidance and Counseling staff discerns that the Pre-Sentence Report contains information that was obtained upon a promise of confidentiality; a copy will not be provided to the incarcerated individual until such time as the Court decides whether or not information contained in the report should be redacted. CO Guidance and Counseling staff will be responsible for sending the Pre-Sentence Report to the Court (to the attention of the judge).

- (2) Order DOCCS CO Guidance and Counseling staff to provide the Court with a true copy of the Pre-Sentence Report from the Community Supervision file. The Court will review the Pre-Sentence Report and decide if any of the information needs to be redacted.
  - d. It will be the responsibility of CO Guidance and Counseling staff to review and inspect the Order from the Court, and to examine the Pre-Sentence Report to determine if any redactions are necessary regarding the personal information involving crime victims and their families.
  - e. If CO Guidance and Counseling staff make a determination that the Pre-Sentence Report contains information that was obtained upon a promise of confidentiality, the presentence report and a copy of the Order will be sent to the Court no later than five business days following receipt of the original Order from the Court. CO Guidance and Counseling staff will make the appropriate case entry in the incarcerated individual's CMS record identifying the date the documents were sent to the Court.
2. Release of the Pre-Sentence Report by CO Guidance and Counseling Staff
    - a. After the Sentencing Court (Judge) renders the appropriate Order, the completed Form #CS8370 (Part 1 and Part 2) will be returned by mail or email to CO Guidance and Counseling.
    - b. It is the responsibility of CO Guidance and Counseling staff to implement the Order, to notify the SORC (or designee), and to provide appropriate instructions to facility staff.
    - c. Within five business days of receipt of the Order of the Court to grant the release of the Pre-Sentence Report, CO Guidance and Counseling staff will instruct facility staff to provide the incarcerated individual with either:
      - (1) A copy of the Pre-Sentence Report without any redactions.
      - (2) A copy of the Pre-Sentence Report with appropriate redactions as directed by the Court.

NOTE: CO Guidance and Counseling staff will provide facility staff with the copy of the redacted version of the Pre-Sentence Report.

- d. CO Guidance and Counseling staff will make the appropriate case entry in the incarcerated individual's CMS record identifying the date the documents were sent to the assigned facility staff as indicated in Section IV-C.
- e. A copy of the Pre-Sentence Report if submitted to the Court, a copy of the Order to grant release of the Pre-Sentence Report, a copy of the redacted version of the Pre-Sentence Report, and accompanying Court Order shall be placed in the Community Supervision Central File in file Section II-B.

3. Interview with the Incarcerated Individual
  - a. The incarcerated individual will be interviewed by the ORC and provided with either a copy of the Pre-Sentence Report without any redactions or a copy of the report with the appropriate redactions. The incarcerated individual will also be provided with a copy of the accompanying "Order Granting Disclosure of the Pre-Sentence Report."
  - b. The ORC will make the appropriate case entry in the incarcerated individual's CMS record to include the date of service and the identification of the documents, including the indictment number and court issuing the order, provided to the incarcerated individual as indicated in Section IV-C.
- C. CMS Case Entry Requirements: The following CMS contact/activity codes shall be utilized to record the required case actions in accordance with this directive:
  1. Code - PR1 - P'SENTENCE REQ'ST SENT/CT – Assigned/current facility SORC/ORC shall confirm submission of the request form(s) to the Court via case entry in the CMS record of the incarcerated individual.
  2. Code - PR2 - P'SENTENCE RPT REC'V/CT - CO Guidance and Counseling staff shall confirm receipt of the Order from the Court via entry in the CMS record of the incarcerated individual.
  3. Code - PR3 - P'SENTENCE RPT SENT/COURT – Whereby the Court orders DOCCS to provide the Court with a true copy of the Pre-Sentence Report in its possession; or CO Guidance and Counseling staff make a determination that the Pre-Sentence Report contains information that was obtained upon a promise of confidentiality. Staff shall document in the CMS record of the incarcerated individual that the Pre-Sentence Report and a copy of the Order were sent to the Court no later than five business days following the original receipt of the Order from the Court.
  4. Code - PR4 - P'SENTENCE RPT SENT/FAC - CO Guidance and Counseling staff shall, within five business days of receipt of the Order from the Court, instruct assigned or current facility SORC to provide the incarcerated individual with either a copy of the Pre-Sentence Report without any redactions or a copy of the Pre-Sentence Report with appropriate redactions as directed by the Court. CO Guidance and Counseling staff shall make the appropriate entry in the CMS record of the incarcerated individual and note the date the documents were sent to owning facility staff.
  5. Code - PR5 - P'SENTENCE RPT TO OFFENDER - Facility ORC shall make the appropriate entry in the CMS record of the incarcerated individual, noting the date of service and the identification of the documents provided to the incarcerated individual. Staff shall provide a copy of the Order and the Pre-Sentence Report via an interview with the incarcerated individual.